OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 29, 2020

Via electronic mail
Mr. Jon Styf
Senior News Editor
Shaw Media
jstyf@shawmedia.com

Via electronic mail
Mr. David Engelbrecht
Superintendent
Marengo Community High School District No. 154
110 Franks Road
Marengo, Illinois 60152
engelbrechtd@mchs154.org

RE: OMA Request for Review – 2019 PAC 59235

Dear Mr. Styf and Mr. Engelbrecht:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, the Public Access Bureau concludes that the Marengo Community High School District No. 154 (School District) Board of Education (Board) violated OMA in connection with its June 24, 2019, meeting agenda and minutes.

On August 7, 2019, Mr. Styf, on behalf of the *Northwest Herald*, submitted this Request for Review alleging, in relevant part, that the Board's June 24, 2019, meeting agenda did not adequately identify the general subject matter of certain items slated for final action. In addition, Mr. Styf alleged that the Board's minutes indicate that the Board approved raises for administrators in open session, following its closed session discussion of those raises, without first providing a public recital to inform the public of the business being conducted.

On August 19, 2019, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to the allegations, together with copies of

the notice, agenda, and minutes for the June 24, 2019, meeting. On August 27, 2019, Superintendent David Engelbrecht provided a written response and the supporting materials on behalf of the Board. This office forwarded the response to Mr. Styf; he did not submit a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.02(c) of OMA

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) requires an agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

District Personnel Compensation

Mr. Styf alleged that the Board's June 24, 2019, agenda failed to identify final action concerning personnel pay raises and administrator compensation. In its response to this office, the Board asserted that its closed session exception "Executive session to discuss personnel, The compensation and performance of employees of the District[,]"[1] when read in conjunction with the immediately succeeding agenda item "Possible action as a result from Executive Session[,]"[2] properly identified the subject of possible final action. Indeed, the latter agenda item provided a reasonable inference that the Board may have taken final action with respect to the compensation and performance of District personnel following closed session discussion. The Public Access Bureau has previously determined, however, that overly-generic agenda items pertaining to personnel do not meet the requirements of section 2.02(c) of OMA. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 42948, 42969, issued May 25, 2017, at 4-5 (agenda item "Employment of Personnel" did not provide general subject matter of vote to approve administrators' salaries). Further, this office has explained that

> to comply with section 2.02(c), an agenda item for personnel actions must at least reference the category or categories of

[1]Community High School District No. 154 Board of Education, Meeting, Agenda Item F (June 24, 2019).

[2]Community High School District No. 154 Board of Education, Meeting, Agenda Item G (June 24, 2019).

> employees at issue, such as teachers, bus drivers, social workers, etc. Absent such general information concerning the positions subject to Board actions, members of the public who follow the activities of the Board will have little knowledge of what it will be acting upon. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53265, issued August 28, 2018, at 5.

Although the Board provided sufficient notice that it might take final action following closed session, Agenda Item F did not sufficiently set forth the general subject matter of the potential action. For example, the agenda item could have identified the categories of District personnel at issue or otherwise have expanded on the types of actions being contemplated with respect to compensation and performance. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA with respect to that agenda item. Because the Board has indicated that it will include greater detail in future meeting agendas, no further remedial action is necessary at this time.

Recommendation to approve personnel report

Mr. Styf also alleged that Board's meeting agenda provided only "Recommend approval of the personnel report"[3] without further detail. In its response to that allegation, the Board explained:

> The agenda that is publicly posted for school board meetings previously noted, "Approval of personnel report." During the open meeting, the board provides handouts with supplemental documentation if used, detailing items of discussion including names, positions, and related information. It is open discussion in open session regarding those individuals prior to any action being taken. The vote which approves the personnel report is inclusive of all individuals publicly discussed in the open meeting unless the board specifies changes. In this situation, which is infrequent, a motion is made to amend and then later to accept the personnel report as amended, excluding any individuals that the board may have decided not to take action on.

[3]Community High School District No. 154 Board of Education, Meeting, Agenda Item E.7 (June 24, 2019).

> In order to provide additional transparency on our agendas, beginning this fiscal year we will state each individual's name, their position, and their placement on the salary schedule on the personnel section of the agenda.[4]

The Board's response to this office did not describe in depth the types of final action associated with approving its personnel report or if the report is limited only to the discussion of District personnel. However, this office notes that such an agenda item could encompass virtually any matter relating to District personnel. Although section 2.02(c) does not require the agenda to identify the subject of possible final action by name or the specific action being contemplated, the Board's agenda item was simply too vague and imprecise to provide any meaningful notice to the public of the type of action the Board planned to take with respect to personnel. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 13540, issued June 22, 2011, at 4 (agenda item for "personnel matters" did not provide sufficient advance notice of public body's vote to approve an employment contract). Further, although the Board asserted that it typically provides during its meetings supplemental documentation concerning items under review in the personnel report, it has not otherwise indicated that those materials are publicly available at least 48 hours before a meeting. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA with respect to that agenda item. Because the Board has indicated that it will include greater detail in future meeting agendas, no further remedial action is necessary at this time.

Section 2(e) of OMA

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2018)) provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

Mr. Styf alleged that the Board failed to properly inform the public of a vote concerning compensation following closed session discussion. He also noted that the June 24, 2019, meeting minutes do not adequately describe any open session discussion of that topic.[5] The Board's response to this office provided, in relevant part:

> The Board then came out of executive session and discussed the ESP raises and also the administrative salaries and

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[4]Letter from David N. Engelbrecht, Ed.S., Superintendent, to Christopher R. Boggs, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (August 27, 2019), at 1-2.

[5]Section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2018)) requires public bodies to keep written meeting minutes, which shall include, in relevant part, "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken."

> contracts in open session. Documentation showing proposed salaries was reviewed and discussed in open session. A motion was made and seconded, "To approve administrator contracts and raises as discussed." There was a roll call vote. Then there was a motion made and seconded, "To approve ESP Staff raises as discussed." There was a roll call vote.
>
> Upon receipt of the email from Mr. Styf and reviewing the minutes of the meeting, I recognize that they do not note the discussion out of closed session, documentation of raises, or details of the discussion and review that was in open session. Additionally, the recorded motion does not reflect the contract approval of administrators in addition to the raise approval. The minutes of the June 24, 2019 meeting were amended at the August 26, 2019 meeting to accurately document meeting details and are attached with changes in bold. The discussed documentation of salaries, which became public at the meeting and afterward, are attached to the minutes. Future minutes will be more carefully documented to include details of open session discussion and actions.[6]

The Board's response to this office confirmed that, following closed session, it discussed in various detail staff raises and administrator salary proposals prior to taking final action on those items. This office has not received any evidence to the contrary. Accordingly, based on the information provided, this office is unable to conclude that the Board violated section 2(e) of OMA at its June 24. 2019, meeting.

However, the Board also acknowledged that the June 24, 2019, meeting minutes did not adequately reflect the extent of the Board's discussion of those items in open session. Section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2018)) requires that a public body include in its meeting minutes "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." Because the Board's meeting minutes did not include summaries of its discussions of the items at issue, this office concludes that the Board violated the requirements of section 2.06(a)(3) of OMA. The Board's response, however, stated that it has since amended its June 24, 2019, meeting minutes and indicated that it will more carefully document open session discussions in the future, therefore no further remedial action is necessary at this time.

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[6]Letter from David N. Engelbrecht, Ed.S., Superintendent, to Christopher R. Boggs, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (August 27, 2019), at 1-2.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (217) 785-7438 or at cboggs@atg.state.il.us.

Very truly yours,

[redacted]

CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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